

Message Text

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TAGS: SNAR

SUBJECT: NARCOTICS:INCB OPINION ON CANNABIS LEAVES

1. DURING RECENT CONVERSATIONS IN GENEVA BETWEEN ASSISTANT LEGAL ADVISER FIELDS AND OFFICER GOUGH ON SUBJECT OF REQUIREMENT TO CONTROL CANNABIS LEAVES (MARIJUANA), FIELDS WAS GIVEN COPY OF CONFIDENTIAL (UN CLASSIFICATION) INCB DOCUMENT DATED 28 MAY 1975 CONTAINING EXCHANGE OF CORRESPONDENCE BETWEEN DUTCH MINISTER OF PUBLIC HEALTH AND INCB PRESIDENT REUTER. GOUGH INDICATED THAT IT COULD NOT BE RELEASED WITHOUT PROPER AUTHORIZATION FROM INCB. THIS DOCUMENT WOULD BE VERY HELPFUL IN TESTIMONY BEFORE SEVERAL CONGRESSIONAL COMMITTEES PRESENTLY CONSIDERING LEGISLATION DEALING WITH GENERAL SUBJECT OF NARCOTICS, AND DEPT DESIRES PERMISSION TO USE DOCUMENT IN CONJUNCTION WITH ITS CONGRESSIONAL PRESENTATIONS. DEPT WOULD APPRECIATE MISSION CONTACTING INCB FOR AUTHORITY TO MAKE PUBLIC THIS POSITION OF BOARD.

2. WITH FURTHER REFERENCE TO GOUGH/FIELDS MEETING, DEPT WOULD BE INTERESTED IN VIEWS OF INCB ON LEGAL CONSEQUENCES OF THE FOLLOWING ACTIONS ON OBLIGATIONS UNDER THE SINGLE CONVENTION AND AMENDING PROTOCOL: (A) DE-
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CRIMINALIZATION OF USE AND POSSESSION OF SMALL AMOUNTS

OF MARIJUANA. IN 1973 THE STATE OF OREGON ENACTED LEGISLATION TO DECRIMINALIZE POSSESSION OF ONE OUNCE OR LESS OF MARIJUANA AND MADE SUCH POSSESSION A CIVIL OFFENSE PUNISHABLE BY A FINE OF \$100 OR LESS. SIMILAR LEGISLATION IS BEING CONSIDERED BY OTHER STATES AND DEPT WOULD BE INTERESTED IN INCB VIEWS ON THE ACTIONS OF POLITICAL SUBDIVISIONS OF MEMBER STATES. DEPT REALIZES THAT THERE REMAINS A VALID FEDERAL STATUTE PROHIBITING USE OF MARIJUANA AND MAKING ITS POSSESSION A CRIMINAL OFFENSE UNDER U.S. LAW. MOREOVER, IT RECOGNIZES THAT STATE LAWS TO THE CONTRARY ACT ONLY WITHIN THE GEOGRAPHICAL LIMITS OF THE STATE AND CANNOT DEROGATE FROM THE FORCE AND EFFECT OF THE FEDERAL LAW. MOREOVER, THERE IS PROPOSED LEGISLATION PENDING IN CONGRESS TO DECRIMINALIZE THE PERSONAL POSSESSION AND USE OF SMALL QUANTITIES OF MARIJUANA. THUS, THE BOARD'S OPINION AS TO DECRIMINALIZATION BY (1) A POLITICAL SUBDIVISION OF AN ADHERING COUNTRY AND (2) THE ADHERING COUNTRY ITSELF IS SOUGHT. THE PRESIDENT OF INCB HAS NOT ADDRESSED HIMSELF IN THE DUTCH INQUIRY SPECIFICALLY TO THE DECRIMINALIZATION QUESTION BUT RATHER TO THE BROADER QUESTION OF DECONTROLLING CANNABIS LEAVES. BOTH THE OREGON STATUTE AND PROPOSED FEDERAL LEGISLATION ON DECRIMINALIZATION WOULD NOT SEEK TO DECONTROL THE SUBSTANCE BUT RATHER WOULD MITIGATE THE PENALTIES ASSSESSED AGAINST A POSSESSOR OR USER OF SMALL AMOUNTS OF IT. IT IS CLEAR THAT THE BOARD WOULD CONSIDER DECONTROLLING THE CANNABIS LEAVES AS A FAILURE TO PREVENT MISUSE OF THE SUBSTANCE, BUT ITS ATTITUDE ON PENALTIES FOR MISUSE IS NOT CLEAR FROM THE REUTER OPINION. (B) LEGALIZATION OF THE POSSESSION AND USE OF SMALL AMOUNTS OF MARIJUANA. THE SUPREME COURT OF ALASKA HAS RECENTLY INVALIDATED ALASKAN LAWS ON MARIJUANA CONTROL AND HELD THAT THE PERSONAL POSSESSION AND INGESTION OF MARIJUANA "BY ADULTS AT HOME" TO BE CONSTITUTIONALLY PROTECTED UNDER THE RIGHT OF PRIVACY GUARANTEES OF BOTH FEDERAL AND ALASKAN CONSTITUTIONS. AGAIN, THE DEPT RECOGNIZES THAT SUCH STATE ACTION CANNOT DEROGATE FROM FEDERAL LAW AND HAS ONLY THE EFFECT OF PRECLUDING STATE OR LOCAL PROSECUTIONS FOR POSSESSION AND USE OF MARIJUANA WITHIN THE

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TERRITORIAL LIMITS OF THE STATE OF ALASKA. THERE IS NO FEDERAL LEGISLATION PENDING WHICH WOULD HAVE THE EFFECT OF LEGALIZING THE USE AND POSSESSION OF MARIJUANA.

3. INCB VIEWS ON THESE WOULD BE MOST HELPFUL TO THE DEPT IN FRAMING ITS POSITION TO THE CONGRESS ON THE SEVERAL BILLS PRESENTLY PENDING IN THIS AREA.

4. IT IS ANTICIPATED THAT CONGRESS WILL TAKE ITS SUMMER RECESS DURING THE MONTH OF AUGUST AND THAT THESE PENDING BITS OF LEGISLATION WILL BE TAKEN UP UPON ITS RETURN IN SEPTEMBER. ANY RESPONSES TO THIS INQUIRY FROM THE BOARD CAN HOPEFULLY BE MADE AVAILABLE TO THE DEPT PRIOR TO THE RECONVENING OF CONGRESS IN SEPTEMBER. THE ASSISTANCE OF THE MISSION IN THIS REGARD WILL BE GREATLY APPRECIATED.

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